



39 CFR Part 111

Counterfeit Postage

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) in various sections to clarify the handling of items found in the mail bearing counterfeit postage.

DATES: *Effective:* May 7, 2023.

FOR FURTHER INFORMATION CONTACT: Jane Quenk at (202) 268-7098 or Garry Rodriguez at (202) 268-7281.

SUPPLEMENTARY INFORMATION: On February 16, 2023, the Postal Service published a notice of proposed rulemaking (88 FR 10068) to revise the DMM in various sections to clarify the handling of items found in the mail bearing counterfeit postage. The Postal Service received numerous comments on that notice, and it appreciates the valuable public input. Multiple commenters expressed support for the Postal Service efforts to address counterfeit postage, an issue that many commenters viewed as wide-spread, problematic, and a risk to Postal Service revenue. The Postal Service now responds to the comments received as follows:

Comments Relating to Information About Counterfeit Postage

Comment: The Postal Service received several comments requesting to know how to avoid purchasing counterfeit postage.

Response: Customers are urged to purchase their postage from legitimate vendors. Information about where to buy legitimate postage is available on

usps.com. See <https://faq.usps.com/s/article/What-is-an-Approved-Postal-Provider>.

Comment: Various commenters requested training that would provide them information to allow them to tell the difference between counterfeit and legitimate postage.

Response: Training about security enhancements and security measures found in postage will not be provided to the public because revealing this information could lead to misuse of the information and enable the creation of counterfeit postage.

Comment: Comments reflect that customers and shippers want to know when an item they expect to be delivered has been identified as having counterfeit postage.

Response: USPS is looking at enhancements to tracking and scanning technologies to provide appropriate messaging.

Comments Related to How the Postal Service Will Identify Counterfeit Postage and Whether There Will Be an Administrative Review Process.

Comment: Commenters expressed concerns related to the process of identifying counterfeit postage and were concerned about the possible misidentification of valid postage as counterfeit postage. Others worried that a misidentification would lead to improper abandonment, disposal, or to items being stolen. Further, one commenter asked about whether there would be an administrative review process for such findings.

Response: The Postal Service is mindful of these concerns. To limit misidentification of counterfeit postage, the Postal Service will only allow related determinations to be made by individuals who are trained and authorized or by approved machine systems programmed to identify the counterfeit postage. This

will help to build expertise and reduce opportunities for the improper, or inconsistent, handling of such matters and will better ensure the security of the mails. Further, the Postal Service is not planning to implement an administrative review process. The Postal Service is making its best efforts to reduce the occurrence of misidentified counterfeit postage. Given the volume of mail using counterfeit postage, and the prevalence of invalid return addresses used on items bearing counterfeit postage, implementation of such an administrative process is impractical. As the issuer of postage, the Postal Service is the final arbiter of what is valid postage versus what is counterfeit postage.

Comments Regarding the Plan to Abandon and Dispose of Items Bearing Counterfeit Postage

The rule will allow items found in the mails with counterfeit postage to be “considered abandoned” and allows for such items to be “disposed of at the discretion of the Postal Service.”

Comment: Several comments were received suggesting that items that bear counterfeit postage not be abandoned; instead, they sought to have such items delivered postage due, postage due with a fine, or alternatively to be delivered COD (collect on delivery - requires payment of postage and fees at time of mailing). The comments characterize the refusal to deliver the items as postage due as “punishing the victim.”

Response: These suggestions carry a significant cost for the Postal Service, and under existing regulations, the Postal Service may not deliver – even as postage due or as COD – items with no postage, including those that bear counterfeit postage. This regulation is not intended to punish the addressee. Instead, the regulation seeks to abide with current regulations by refusing to expend resources to deliver an item for which no postage was paid.

Comment: Some comments suggested that it was improper to abandon and dispose of these items unless the Postal Service could prove that the sender knew the postage was counterfeit.

Response: The introduction to the regulation referred to fact that that the intentional use of counterfeit postage to defraud the government is a crime. Although the Postal Service noted this fact, and the regulation may discourage this activity, the regulation is not issued to penalize criminal activity and therefore, the Postal Service is not required to prove that the mailer knew the postage was counterfeit when it used it for mailing purposes. Instead, the regulation is promulgated under the Postal Service's broad authority to deliver the mails in a cost-efficient manner and to comply with existing regulations.

Comments Questioning the Efficacy of the Rule and Suggesting Alternate Manners of Combatting Counterfeit Postage

Comment: Some comments pointed out that the regulation would be helpful but noted that it would not adequately address or solve counterfeit postage issues. Other comments pointed to problems with various types of postage and complex pricing models that lead to losses, while others identified alternate manners of combatting counterfeit postage.

Response: The alternate methods discussed included: improvements to various postage payment methods, the enforcement of criminal laws, deputizing retired stamp collectors to monitor ads that sell counterfeit postage, and creating a counterfeit postage vendor list. The abandonment process in the regulation does not replace the investigation and prosecution of criminal conduct. The Postal Inspection Service continues to work on these investigations. The Postal Service does not view the new regulation as an exclusive solution, rather, it

views it as part of a multi-pronged approach to address counterfeit postage issues.

Miscellaneous Comments Outside of the Scope of the Regulation

Comment: Many comments were submitted providing tips on where counterfeit postage is being sold.

Response: These comments are beyond the scope of the regulation, but they will be forwarded to the Postal Inspection Service.

Comment: Some comments received suggested the Postal Service donate items that are abandoned or expressed concerns with how the items will be handled after abandonment.

Response: These comments are outside of the scope of regulation because once the property is abandoned, the disposition of that property is within the Postal Service's discretion. Even so, the Postal Service is aware of the many methods that may be used to dispose of items and will handle these items in a responsible and sustainable manner.

Comment: "What does resembling a postage stamp [sic] in form and design mean? Can I affix foreign stamps for philatelic purposes."

Response: Although these questions are beyond the scope of the regulation, we refer the commenter to DMM 604.1.3. This provision explains that the use of foreign stamps is invalid for use as postage in the United States and may not be used for domestic originated international mail.

Comment: One commenter pointed out that there was no cost benefit analysis provided with the proposed regulation.

Response: The Administrative Procedures Act does not apply to the Postal Service, nonetheless, the Postal Service has chosen to publish the proposed regulation to provide public notice and an opportunity to comment. The

Postal Service is not required to provide a cost benefit analysis to substantiate this rule. However, as the Postal Service has explained, the rule has been issued to address the critical problem resulting from the increases in the volume of packages with counterfeit postage.

The Postal Service seeks to distinguish the handling of articles entered without postage under subsection 604.8.2 from those that contain counterfeit postage.

Therefore, the Postal Service is revising subsection 604.8.4 to provide that when all articles with counterfeit postage are found they will be considered abandoned and disposed of at the discretion of the Postal Service, rather than be returned to the sender as the affixing of counterfeit postage reflects a refusal to pay postage or an intentional effort to avoid paying postage. The Postal Service is also revising various other subsections for clarity with the revision to subsection 604.8.4.

We believe this revision will provide customers with clarity on the handling of items bearing counterfeit postage.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111 – GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401-404, 414, 416, 3001-3018, 3201-3220, 3401-3406, 3621, 3622, 3626, 3629, 3631-3633, 3641, 3681-3685, and 5001.

2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

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500 Additional Mailing Services

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507 Mailer Services

1.0 Treatment of Mail

1.1 Nondelivery of Mail

Mail can be undeliverable for these reasons:

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[Renumber items b through g as c through h and add new item b to read as follows:]

b. Counterfeit Postage (see 604.8.4).

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604 Postage Payment Methods and Refunds

1.0 Stamps

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1.4 Imitations of Stamps

[Revise the text of 1.4 to read as follows:]

Matter bearing imitations of postage stamps, in adhesive or printed form, or private seals or stickers resembling a postage stamp in form and design, is not acceptable for mailing (See 8.4.2 for handling items with counterfeit postage.).

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4.0 Postage Meters and PC Postage Products (“Postage Evidencing Systems”)

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4.4 Postage Discrepancies

4.4.1 Definitions

[Revise the text of 4.4.1 by deleting the last sentence.]

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8.0 Insufficient or Omitted Postage

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8.2 Omitted Postage

8.2.1 Handling Mail With Omitted Postage

[Revise the first sentence of 8.2.1 to read as follows:]

Except under 8.4 matter of any class, including that for which extra services are indicated, received at either the office of mailing or office of address without postage, is endorsed “Returned for Postage” and is returned to the sender without an attempt at delivery. ***

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[Revise the heading and text of 8.4 to read as follows:]

8.4 Counterfeit Postage

8.4.1 Definition

Counterfeit postage is any marking or indicia that has been made, printed, or otherwise created without authorization from the Postal Service that is printed or

applied, or otherwise affixed, on an article placed in the mails that indicates or represents that valid postage has been paid to mail the article.

8.4.2 Handling Items with Counterfeit Postage

Items found in the mail bearing counterfeit postage will be considered abandoned and disposed of at the discretion of the Postal Service.

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Tram T. Pham,

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